

Montana Water Court
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MONTANA WATER COURT, UPPER MISSOURI DIVISION
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q

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CLAIMANTS: Bruce A. Hoyer; Celeste C. Hoyer

CASE 41Q-0107-I-2023
41Q 30111631

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Bruce A. Hoyer and Celeste C. Hoyer domestic claim 41Q 30111631 was decreed with DNRC issue remarks:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.
THE POINT OF DIVERSION LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.
THE PLACE OF USE LEGAL LAND DESCRIPTION COULD NOT BE REFINED FROM INFORMATION IN THE CLAIM FILE.
THE CLAIMED PRIORITY DATE MAY BE QUESTIONABLE. THE PRIORITY DATE ON THE SUBMITTED 2017 LETTER IS LATE 1960S.

All DNRC issue remarks must be resolved.

2. The DNRC failed to substantiate the second and third issue remarks.
3. Claim 41Q 30111631 was originally claimed with a 1961 priority date:

13. TYPE OF HISTORIC RIGHT: ☐ Decreed ☐ Filed Appropriation ☐ Use Date of first use: Previous owner purchase in 1961. No well records.
Attach copies of the decree, record of filing, or proof of use right.

Subsequently, the Claimants amended the priority date to 1971 and the DNRC standardized the priority date to December 31, 1971. The Claimants did not provide documentation to support the priority date.

Claim 41Q 30111631 is a groundwater claim that falls under the 1961 Groundwater Code, and its specific filing provisions. “Until a notice of completion is filed with respect to any use of groundwater instituted after January 1, 1962, no right to that use of water shall be recognized.” Section 89-2913 R.C.M. This was repealed in 1973 but remains applicable to all groundwater appropriations that occurred between January 1, 1962 and July 1, 1973. “The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is . . . the date of the filing of the claim of existing water right.” Section 85-2-306 MCA. A Statement of Claim is the “claim” filed pursuant to section 85-2-221 MCA.

4. An Order was issued setting a deadline for the Claimants to determine if a Notice of Appropriation or Notice of Completion exists for their claim. The Order indicated that if nothing were filed by August 11, 2023, this Water Master would conclude Claimants Bruce A. Hoyer and Celeste C. Hoyer agree the priority date for claim 41Q 30111631 should be modified to the filing date of the Statement of Claim (June 26, 2017). The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.

Nothing was filed by the deadline.

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564. The existence of issue remarks alone does not overcome the prima facie Statement of Claim.

2. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

3. The first issue remark decreed on claim 41Q 30111631, indicating the claim was not included in the decree issued in 2010, is a notice-type issue remark. As no objection was filed, no further proceedings are required.

RECOMMENDATIONS

1. The priority date for claim 41Q 30111631 should be modified to June 26, 2017, and the type of historical right should be changed from “use” to “filed”.

2. The issue remarks should be removed from the claim.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Bruce A. Hoyer
Celeste C. Hoyer
4848 US Hwy 89
Monarch, MT 59463

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30111631 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BRUCE A HOYER
4848 US HWY 89
MONARCH, MT 59463 9718

CELESTE C HOYER
4848 US HWY 89
MONARCH, MT 59463 9718

Priority Date: JUNE 26, 2017

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 20.00 GPM

Volume: 3.40 AC-FT

Households: 1

Maximum Acres: 0.75

Source Name: GROUNDWATER

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			10	15N	7E	CASCADE

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: WELL

THE POINT OF DIVERSION IS LOCATED IN FJ GIES SUBDIVISION.

THE POINT OF DIVERSION IS LOCATED IN TRACT 8 OF CERTIFICATE OF SURVEY NO. 3511.

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.75			10	15N	7E	CASCADE

Total: 0.75

THE PLACE OF USE IS LOCATED IN FJ GIES SUBDIVISION.

THE PLACE OF USE IS LOCATED IN TRACT 8 OF CERTIFICATE OF SURVEY NO. 3511.